



Paper No. 14

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**MAR 20 2003**

**OFFICE OF PETITIONS**

In re Application of  
Kenneth Gould, Joo Chung,  
Michael Sun and Frank Huang  
Application No. 09/752,744  
Filed: December 29, 2000  
Attorney Docket No. 2585-007  
Title: System and Method for  
Multicast Stream Failure

DECISION ON PETITION

This is a decision on the third renewed petition filed March 5, 2003, under 37 CFR 1.137(b), to revive the above-identified application; and responds to the new declaration under 37 CFR 1.47(a), filed therewith.

The petition under 1.47 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b) and 1.47."

A decision on the petition under 1.137(b) is being held in abeyance pending satisfaction of the requirements under 1.47.

The above-identified application became abandoned for failure to reply to the Notice to File Missing Parts of Application mailed February 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, with extensions of time obtainable under 37 CFR 1.136(a). No reply having been timely received and no extensions of time obtained, the above-identified application became abandoned on April 16, 2001. The initial petition filed June 10, 2002, was dismissed for failure to submit the required reply to the Notice to File Missing Parts of Application<sup>1</sup>. The reply filed on petition did not include an acceptable declaration, the late surcharge or new drawings.

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<sup>1</sup> A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to 37 CFR 1.137(d).

On first renewed petition, filed November 14, 2002, petitioner authorized payment of the late surcharge and submitted a new declaration executed by joint inventor Gould on behalf of himself and on behalf of non-signing inventors Chung, Sun and Huang. However, the petition was dismissed because the declaration did not comply with 35 U.S.C. 115<sup>2</sup> and the petition did not include substitute drawings. Petitioner was specifically advised that the statutory requirement could not be waived, and that a new executed declaration in compliance with § 1.47 properly setting forth each of the inventor's citizenship was required (or a declaration executed by all of the inventors properly setting forth each of the inventor's citizenship) (Decision mailed December 9, 2002).

On second renewed petition, petitioner submitted a new declaration and substitute drawings. The drawings were found sufficient for purposes of satisfying the required reply component of § 1.137(b)(1) and reviving the application. However, the declaration still was not acceptable. The declaration did not include the citizenship of all inventors as statutorily required (Decision mailed January 6, 2003).

On instant request for reconsideration, petitioner submitted a new declaration along with a declaration under § 1.131 by patent attorney Jon L. Roberts. The declaration for patent included the citizenship of all inventors, except inventor Chung. In the space where his/her citizenship should have been designated the declaration said "\*\*\*See declaration\*\*," referring to the declaration under § 1.131. This declaration attests to inventor Chung's citizenship being that of the United States, details the efforts set forth to determine his/her citizenship.

Notwithstanding the declaration under § 1.131, the declaration for patent must designate a citizenship for inventor Chung. Accordingly, the Office accepts the following under these circumstances:

Mr/Ms. Chung's citizenship designated as US in the appropriate space on the declaration. The designation of US marked with an asterisk, as follows:

citizenship: "US\*"

"I declare to the best of my knowledge, information and belief, that the citizen of inventor Joo Chung is that of the United States." [s] Jon L. Roberts

The entirety of the citizenship designation, the asterisk, the attestation and the signature of attorney Roberts (or other proper declarant) must be a part of the declaration (i.e. not on an attached separate sheet).

**Any renewed petition must include an acceptable declaration (i.e. signed by all available joint inventors, with any changes**

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<sup>2</sup> The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition of matter, or improvement thereof, for which he solicits a patent; and shall state of what country he is a citizen.

**initialed and dated, and meeting the requirements specified in this decision).**

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    Box DAC  
                    Washington, D.C. 20231

By FAX:           (703) 308-6916  
                    Attn: Office of Petitions  
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By hand:           Office of Petitions  
                    2201 South Clark Place  
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                    Arlington, VA

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a long horizontal line extending to the right.

Nancy Johnson  
Petitions Attorney  
Office of Petitions